

OLC 72-1003

15 September 1972

Honorable John C. Stennis, Chairman  
Committee on Armed Services  
United States Senate  
Washington, D. C. 20510

Dear Mr. Chairman:

The Director thought you might be interested in the opinion of the U. S. Circuit Court of Appeals for the Fourth Circuit in the case of the United States against Victor L. Marchetti, which I enclose herewith. In sum, the Court concludes that the secrecy agreement executed by Mr. Marchetti at the commencement of his employment was not in derogation of his constitutional rights. Its provision for submission of material to the CIA for approval prior to publication is enforceable, provided the CIA acts promptly upon such submissions and withholds approval of such publication only of information which is classified and which has not been in the public domain by prior disclosure.

This is the first judicial recognition and enforcement of the Agency's secrecy agreement, the validity of which the Court accepted as necessary for the Director's carrying out of his responsibility for the protection of intelligence sources and methods. The technical requirement for Mr. Marchetti to submit his manuscript to the Agency for review prior to publication, however, does not prevent him from writing critical articles about the Agency, nor has the Agency ever contended that it would or should.

Mr. Marchetti may now appeal the case to the U. S. Supreme Court. The steps required to have a case heard by the Supreme Court are quite involved, and we cannot predict whether the Supreme Court will grant the necessary writ of certiorari.

Sincerely,

STATINTL

John M. Maury  
Legislative Counsel

cc: [REDACTED]

Enclosure

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